IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED RICE LITIGATION	)	**4:06 MD 1811 CDP**
	)	**ALL CASES**

JOINT STATEMENT OF LEAD COUNSEL

Pursuant to Case Management Order No. 1 ("CMO 1"), Lead Counsel for Plaintiffs and Defendants have met and conferred on the issues outlined in the Order and report to the Court as follows:

I. PLAINTIFFS' FACT SHEET ("PFS")

The parties have reached agreement on the form and content of the PFS, a copy of which is attached as Exhibit A. The parties have agreed that all plaintiffs set forth as named plaintiffs in the Master Consolidated Class Action Complaint ("Consolidated Complaint") will provide to defendants' lead counsel completed PFS forms, along with the documents requested therein, no later than June 29, 2007.

The parties have not agreed on the duty of producer plaintiffs, who filed cases that have been transferred (or will be transferred) into this MDL proceeding but who have not been named as plaintiffs in the Consolidated Complaint, to complete the PFS. The competing proposals are as follows with the plaintiffs' proposal in red and defendants' proposal in blue:

Plaintiffs' Proposal: Producer Plaintiffs, who have not been named as plaintiffs in the Consolidated Complaint, shall have no duty to complete the PFS, or otherwise be subject

to discovery, unless and until: (1) any such producer plaintiff is named as a plaintiff in a later amendment to the Consolidated Complaint or is later proffered as a proposed class representative; (2) the Motion for Class Certification is denied; or (3) the Motion for Class Certification is granted, a class permitting opt outs is certified, and any such producer plaintiff effectively opts out of that class and chooses to pursue an individual action.

Defendants' Proposal: All producer plaintiffs, who have suits pending in this court, will provide completed PFS forms to defendants' lead counsel no later than August 6, 2007, without responding to the four document requests in the PFS.

Defendants shall be entitled to select a number of individual producer plaintiffs equal to the number of named plaintiffs in the Consolidated Complaint. The selected individual producer plaintiffs shall produce the documents required by the PFS no later than 30 days after lead counsel for defendants notifies lead counsel for plaintiffs, in writing, of the identity of the selected plaintiffs. The selected individual producer plaintiffs shall then be subject to deposition shortly thereafter, upon notice, according to a schedule that will be negotiated and agreed to by lead counsel. Additional discovery, pursuant to this Court's Orders, from other individual producer plaintiffs, shall proceed promptly and will not be stayed pending expert discovery and briefing for class certification.

II. REQUESTS FOR ADMISSIONS ("RFA")

RFAs may be served any time after the commencement of discovery. Plaintiffs and defendants in the Consolidated Complaint may each collectively serve up to 200 RFAs. Of those 200 RFAs, up to twenty (20) of them may require individual responses by each named plaintiff

or each named defendant named in the Consolidated Complaint. The 200 RFA limit shall not include RFAs relating to the authenticity, genuineness of signature, status as business record or other such formal issues related to the admissibility of documents. The parties agree to meet and confer on such formal issues so as to diminish, to the extent possible, the need for RFAs relating to documents.

III. PROCEDURE FOR DOCUMENT PRODUCTION

The parties have agreed to the Stipulation and Agreed Order Regarding Protocol for Production of Documents and Information Both in Hard Copy and in Electronic Format, which is attached as Exhibit B, with the exception of the disputes denoted in the attachment by color.

Counsel for defendants Riceland Food Inc. and Producers Rice Mill, Inc. have objections to the Agreed Order and will seek leave to present those objections to the Court at the May 31, 2007, Status Conference.

IV. PRESERVATION ORDER

The parties have agreed to the Agreed Order Regarding Preservation of Communications, Documents, Electronic Data, and Other Tangible Items, attached as Exhibit C, with the exception of the disputes denoted in the attachment by color.

Counsel for defendants Riceland Food Inc. and Producers Rice Mill, Inc. have objections to the Agreed Order and will seek leave to present those objections to the Court at the May 31, 2007, Status Conference.

V. CONFIDENTIALITY ORDER

The parties have agreed to the Confidentiality Agreement and Proposed Protective Order attached as Exhibit D.

The parties call the Court's attention to paragraphs 12 and 13 of the Confidentiality Agreement and Proposed Protective Order. Those paragraphs contain procedures for filing Confidential and Highly Confidential documents under seal with the Court and for the use of such documents in court. These procedures have been agreed to by the parties, but because they directly affect the Court and its staff, the parties want to be certain the Court is fully aware of their terms and that they are acceptable to the Court.

VI. SCHEDULE FOR FILING ADDITIONAL PLEADINGS

A. Response to Consolidated Complaint

All defendants named in the Consolidated Complaint and who are properly served before June 21, 2007, will file a responsive pleading no later than June 21, 2007. All defendants who are served with the Consolidated Complaint on or after June 21, 2007, shall file a responsive pleading as required by the Federal Rules of Civil Procedure.

B. Response to Non-Producer Cases

All defendants named and properly served in any non-producer case on file as of May 31, 2007, shall file a responsive pleading on or before July 13, 2007. Any defendants served in a non-producer case after May 31, 2007, shall file responsive pleadings thereto, as required by the Federal Rules of Civil Procedure, unless said case is stayed by Order of the Court

C. Response to Producer Cases Other Than the Consolidated Complaint

The parties have not agreed on the procedure for the other cases brought by producers. The competing proposals are as follows:

Plaintiffs' Proposal: All lawsuits brought by producers other than the Consolidated Complaint, shall be stayed pending the determination of the Motion for Class Certification and all appeals relating to any such certification decision have been exhausted.

Defendants' Proposal: All defendants named and properly served in any producer cases other than the Consolidated Complaint on file as of May 31, 2007, shall file a responsive pleading on or before July 13, 2007. Any defendants served in producer cases other than the Consolidated Complaint after May 31, 2007, shall file responsive pleadings thereto, as required by the Federal Rules of Civil Procedure, unless said case is stayed by Order of the Court

D. Amendment of Pleadings; Joinder of Additional Parties

Except for good cause shown, motions to amend pleadings or to join additional parties may not be filed after January 15, 2008, or as to cases docketed after November 15, 2007, not later than 60 days from the date of docketing.

VII. DEPOSITIONS

A. Scheduling of Depositions

Lead counsel will jointly coordinate the scheduling of all depositions in this litigation. Lead counsel will meet and confer on the order and scheduling of all depositions and attempt to schedule depositions in an orderly manner, which facilitates the progress of the litigation and minimizes, to the extent possible, the burdens on parties and witnesses. Counsel for parties who seek depositions of parties or third party witnesses shall notify lead counsel of the identity of the deponent. Lead counsel will meet and confer in an attempt to schedule the requested depositions consistent with the orderly and efficient administration of this litigation. Lead counsel shall electronically file all notices of deposition on the E.D. Mo. ECF system.

B. Conduct of Depositions

Lead counsel will meet and confer on jointly employing the services of court reporters for the litigation. Any party may request that a deposition be videotaped by giving lead counsel notice of such request seven (7) or more days prior to the scheduled date of the deposition. All

objections, other than for form, foundation, or privilege, are preserved. An objection by counsel for any plaintiff or defendant shall be interpreted as an objection on behalf of all other plaintiffs or defendants.

C. Jurisdictional Depositions

Depositions taken for the purpose of determining the jurisdiction of this Court over defendants named in the Consolidated Complaint may be scheduled at any time after proper service of that defendant, unless the unserved defendant consents otherwise. Such consent shall not be construed as a waiver of that unserved defendant's rights in any manner, including that defendant's right to challenge or otherwise contest jurisdiction.

D. Class and Merits Depositions

Plaintiffs' Proposal: Other depositions may commence August 20, 2007, other than Rule 30(b)(6) depositions directed at document organization, document location, document custodians, document retention and destruction policies and practices, and the organizational, ownership, and decision-making structure(s) and practices of all Bayer-related entities, which may commence at any time following the start of the discovery period in this Action.

Defendants' Proposal: Other depositions may commence August 20, 2007.

E. Payment of Experts' Fees and Expenses

Each party shall be responsible for the fees and expenses of its own expert(s) in connection with any depositions.

F. Cross Noticing with State Actions

All depositions in this litigation may be cross noticed in any related action pending in state court, and may be utilized in any case in these MDL proceedings, and, consistent with applicable state law, in any related state court proceedings.

G. One Deposition for Each Witness

Unless good cause is shown, no witness shall be deposed more than once in the litigation. A party seeking a second deposition of a witness shall provide lead counsel, in writing, an explanation of the need for a second deposition and a list of the subjects on which it seeks to depose the witness. The second deposition shall be permitted only upon consent of lead counsel or an Order of the Court for good cause shown.

VIII. SCHEDULE OF CLASS CERTIFICATION MOTION AND BRIEFING

Counsel were unable to reach agreement on this issue. Plaintiffs' proposal is set forth in parentheses and in red text. Defendants' proposals are set forth in brackets and blue text.

Any motion for class certification and supporting memorandum shall be filed by (November 15, 2007)[April 4, 2008]. Defendants will file any response thereto by (January 15, 2008)[May 2, 2008], and plaintiffs will file their reply memorandum by (March 14, 2008)[May 19, 2008].

IX. DISCLOSURE AND DEPOSITION OF EXPERT WITNESSES RELATING TO CLASS CERTIFICATION

Plaintiffs shall disclose all expert witnesses they intend to use in support of class certification, and shall provide the reports required by Fed. R. Civ. P. 26(a)(2), no later than November 15, 2007, and shall make said experts available for deposition no later than December 20, 2007. Defendants shall identify any expert witnesses they intend to use in opposition to class certification, and shall provide the expert reports required by Fed. R. Civ. P. Rule 26(a)(2), no later than January 11, 2008, and shall produce said experts for deposition no later than February 15, 2008. Plaintiffs shall provide any rebuttal expert report no later than February 29, 2008, and shall produce said experts for deposition no later than March 17, 2008. Rebuttal expert reports shall be permitted only to the extent permitted by Eighth Circuit and Eastern District of Missouri

law. Any motion to strike, exclude, or limit the testimony of an expert on class certification issues shall be filed by March 31, 2008. The responses to any such motion shall be filed by April 14, 2008, and replies by April 21, 2008. Any motions to exclude experts' testimony will be scheduled for hearing on the same day as the class certification hearing.

X. DISCLOSURE AND DEPOSITION OF EXPERT WITNESSES RELATING TO THE MERITS

For those cases filed or docketed in this court by December 1, 2007, Plaintiffs shall disclose all expert witnesses other than those related to class certification issues and provide the reports required by Fed. R. Civ. P. 26(a)(2), no later than August 1, 2008. Plaintiff shall make said experts available for deposition no later than September 1, 2008. Defendants shall disclose all expert witnesses on issues other than class certification and shall provide the reports required by Fed. R. Civ. P. 26(a)(2), no later than September 22, 2008, and shall produce such witnesses for deposition no later than October 22, 2008. Plaintiffs shall designate any rebuttal experts and provide the reports required by Fed. R. Civ. P. 26(a)(2) by November 21, 2008, and shall produce such witnesses for deposition no later than December 19, 2008. Rebuttal expert reports shall be permitted only to the extent permitted by Eighth Circuit and Eastern District of Missouri law.

XI. EXPERT DISCLOSURES

Discovery of experts shall be in accordance with Rule 26, local rules and applicable case law except that the parties will not seek to discover, and may not discover, the following communications and materials:

1. drafts of expert reports, affidavits, declarations, or written testimony;
2. written or oral communications relating to the drafts or final reports, affidavits, declarations, written testimony, or other written materials; and

3. notes of discussions regarding a draft or final expert report, affidavit, declaration, or written testimony.

All parties intend, and the Court orders, that these limitations on disclosure shall apply to every case in this Action and to all related cases remanded or transferred from this Court, whether to state or federal court.

XII. CLOSE OF DISCOVERY

The parties shall complete all fact discovery in cases docketed by December 1, 2007, no later than August 1, 2008 and shall complete all discovery by December 19, 2008. If any cases are filed or docketed in this Court after December 1, 2007, lead counsel for plaintiffs and applicable counsel for defendants shall meet and confer and submit a proposed scheduling order to govern fact and expert discovery in those cases.

XIII. DISPOSITIVE MOTIONS

For those cases filed or docketed in this court by December 1, 2007, all dispositive motions relating thereto shall be filed no later than February 6, 2009. Any response briefs shall be filed within 30 days after the filing of the motion. The movant shall reply within fourteen (14) days thereafter. Any *Daubert* motions relating to expert testimony to be offered at trial shall be filed by February 6, 2009, with responses due within 30 days and replies within fourteen (14) days thereafter. If any cases are filed or docketed in this Court after December 1, 2007, lead counsel for plaintiffs and applicable counsel for defendants shall meet and confer and submit a proposed scheduling order to govern dispositive motions in those cases.

XIV. OTHER ISSUES

A. Stay of Individual Producer Cases

Plaintiffs' lead counsel, no later than June 8, 2007, may move to stay all producer cases, other than the Consolidated Complaint, pending determination of the Motion for Class Certification (including any Rule 23(f) practice). Any party opposing such a stay shall file a response by June 18, 2007 and any reply shall be filed by June 25, 2007.

B. Jurisdictional Discovery

Plaintiffs' Proposal: Plaintiffs may presently commence discovery to determine this Court's jurisdiction over the defendants named in the Consolidated Complaint. For the purposes of clarity, a list of those defendants is appended as Exhibit E to this Joint Status Report. Plaintiffs will attempt, in good faith, to first seek discovery from the United States entities named as defendants in the Consolidated Complaint, but are free to seek discovery from all named defendants, foreign or domestic, in whatever sequence they deem appropriate.

Defendants' Proposal: Plaintiffs may presently commence discovery to determine this Court's jurisdiction over the defendants named in the Consolidated Complaint. For the purposes of clarity, a list of those defendants is appended as Exhibit E to this Joint Status Report. Discovery shall begin with discovery of the United States entities named as defendants in the Consolidated Complaint, and shall not be directed at the foreign entities until the responses of the United States entities have been received.

C. Federal Record Authorizations

By consent of the parties, the deadline for delivery to lead counsel for defendants of executed federal record authorizations by each named representative plaintiff in the Consolidated Complaint, is June 8, 2007.

D. Amendment to CMO 1, Paragraph B(7), Disclosure and Discovery – Request for the Production of Documents and Things

By agreement of the parties, the third sentence is amended to read as follows: All parties shall respond to requests for production **45** days after the requests are propounded. (New language highlighted).

Dated this 29th day of May, 2007.

Respectfully Submitted,

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Liaison Counsel For Defendants

CERTIFICATE OF SERVICE

This is to certify that I have this 29th day of May, 2007, electronically filed a copy of the foregoing with the Clerk of Court to be served by operation of the Court's electronic filing system upon the parties of record.

/s/ *Terry Lueckenhoff*
Terry Lueckenhoff

EXHIBIT A

In Re Genetically Modified Rice Litigation **Confidential Plaintiff Fact Sheet**

1) Plaintiff Name:_____ 2) E.D. Mo. Case No._____ 3) Tax ID:_____ 4) County:_____ 5) State:_____

6) For any farm you have owned or farmed in whole or part from 2003 to the present, please provide:

FSA Farm No.	County FSA Office Location	Total Cropland	2003 Rice Acreage	2004 Rice Acreage	2005 Rice Acreage	2006 Rice Acreage	2007 Rice Acreage

7) Please identify all crops and varieties grown, whether the land was owned, leased (cash rent), or leased (share rent), and the percent of total acres of cropland in each crop and variety:

2003

Crop	Variety	Land	% of Acres
			100%

2004

Crop	Variety	Land	% of Acres
			100%

2005

Crop	Variety	Land	% of Acres
			100%

2006

Crop	Variety	Land	% of Acres
			100%

2007

Crop	Variety	Land	% of Acres
			100%

8) For long grain rice grown or sold, please identify all forms of sale (seasonal pool, pricing pool, booking contract, basis contract, hedged to arrive contract, cash sale, or other contract), and to whom and where such rice was sold and delivered:

Year	How Sold	Name and Location of Buyer(s)	Place(s) of Delivery
2003			
2004			
2005			
2006			
2007			

9) When and how (seasonal pool, pricing pool, booking contract, basis contract, hedged to arrive contract, cash sale, or other contract), was your 2006 long grain rice crop priced?

Date Priced	Amount Priced	How Priced	Purchaser	Contract Number	Price	% Share of your 2006 Long Grain Rice Crop
						100%

10) Identify the name, company name, and address of any crop or marketing consultant(s) who assisted you from 2003 to the present:

_____

11) How much total capacity for rice on-farm storage did you have on August 1, 2006? _____.

12) How much rice did you harvest in 2006?_____ How much of this 2006 harvest was stored in on-farm storage? _____

13) Please identify all long grain rice grown or sold for use as seed (including seed saved for your own use) from 2003 to the present:

Year	Grown or Sold	Variety	Type of Seed (e.g., certified, registered, foundation, saved)	Amount Grown or Sold

14) Please identify all testing for the presence of Liberty Link rice that has been done on rice grown or sold by you

Date Sample Taken	Variety Tested	Bulk Amount Tested	Type of Test (lateral flow strip, PCR, other)	Sample Number	Lab Conducting Test	Result

15) Have you taken steps to remove any Liberty Link Rice from your property or equipment? ___ If yes, please describe when such steps were taken, what steps you have taken, and all persons involved in taking such steps.

16) From 2003 to the present, have you grown or sold any rice as organic or pesticide free? _____ If so, what years and quantities?

17) Has any party claimed that you have defaulted under any contract for the sale or delivery of rice from 2003 to the present? ___ If so, for each such incident, please identify the date of the contract, contract number, and all other contracting parties.

18) Name of person completing form:_____ If plaintiff is a business entity, identify all officers and owners by name and address:_____

Document Requests:

1) All Documents reflecting or documenting rice seed purchased from 2003 to the present or, for seed grown by you and saved for your own use, any processing or treatment of such saved seed.

2) Documents sufficient to show all terms and conditions for all of your sales or contracts for sale of long grain rice grown or to be grown in or after 2003, including the amount, price received, date of promised delivery, marketing option, grade, milling yield quality, moisture content, variety, basis (or other adjustment made by purchaser), marketing fees, purchaser, date of pricing, date of actual delivery, date of sale, and delivery location.

3) All Documents relating to any testing for the presence of Genetically Modified material in rice or rice seed purchased, grown or sold by you.

4) All Documents relating to any cost you believe you have incurred or injury you believe you have suffered as a result of the presence of Liberty Link Rice in conventional rice.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED RICE LITIGATION	)	**4:06 MD 1811 CDP**
	)	**ALL CASES**

STIPULATION AND AGREED ORDER REGARDING PROTOCOL FOR PRODUCTION OF DOCUMENTS AND INFORMATION BOTH IN HARD COPY AND IN ELECTRONIC FORMAT

This Stipulation and Agreed Order sets forth the general protocol and agreement of the parties to this litigation regarding the procedure for production of documents and information (collectively "document(s)"), both in hard copy and in electronic format. The parties shall take reasonable steps to comply with this agreed-upon protocol for the production of all documents and information existing in hard-copy form and documents or other data existing in native electronic format. In the event of remand or transfer to other courts, this Stipulation and Agreed Order will remain in effect in all respects until adopted by the remand or transferee court or replaced by a successor order.

This Stipulation and Agreed Order shall not enlarge or affect the proper scope of discovery in this Action, nor shall this Stipulation and Agreed Order imply that Discovery Material produced under the terms of this Stipulation and Agreed Order is properly discoverable, relevant or admissible in this Action or in any other litigation. Nor does this Stipulation and Agreed Order alter or expand the preservation obligations of any party; such obligations are set forth in a separate order. Discovery Material produced in this Action can only be used in

conjunction with this Action. Nothing in this Stipulation and Agreed Order shall be interpreted to require disclosure of materials which a party contends are protected from disclosure by the attorney-client privilege or the attorney work-product doctrine.

A. Scope

1. To the extent reasonably possible, the Litigation and discovery shall be conducted so as to maximize efficient and quick access to document discovery by litigants and minimize paper document production and distribution costs. All documents that originally existed in either hard-copy or native electronic form that are not privileged or otherwise protected from production and are responsive to discovery requests or Court Order – or are otherwise produced in these proceedings – shall be produced, subject to objections and responses, in electronic image form in the manner provided herein.

2. Except as specifically limited herein, the procedures and protocols set forth below govern the production of discoverable documents and electronically stored information by the parties during the pendency of the Litigation.

3. This protocol shall extend to all documents or electronically stored information produced in this matter.

4. Reasonable efforts will be made to ensure that all documents shall be decrypted.

5. Reasonable efforts will be made to ensure that all documents are legible. If a copy is not legible, the original shall be made available for inspection and copying within thirty (30) days of a request from the Receiving Party, or as mutually agreed upon by the parties.

6. Except as otherwise set forth herein, the procedures and protocols herein apply to the production of documents and information by litigants in this Action.

B. Definitions

The following definitions further clarify the scope of this protocol:

1. The term "Bates Number" means a unique number permanently affixed to a document produced in litigation.

2. The term "Custodian" means a person who had custody of information or a document prior to collection for production.

3. The term "Database" means an electronic collection of structured data (often maintained in a non-custodial manner), such as collections created by Microsoft Access or FileMaker Pro.

4. The term "Electronic Document" means any document existing in electronic form including word processing files (e.g. Microsoft Word), computer presentations (e.g., PowerPoint slides), stand-alone Databases (e.g., Access), spreadsheets (e.g., Excel), farm management software files (e.g., JDOffice or FarmWorks), incomplete or deleted files, together with the Metadata associated with each such document.

5. The term "Load File," as used herein, refers to a file or files issued with each production providing a map to the images and meta-data objective coding contained within the production.

6. The term "Metadata," as used herein, includes, but is not limited to, structured fields or information stored with or associated with a given file. The specific fields of Metadata are set forth in Section C(5), *infra*.

7. The term "Native Format," as used herein, means the default format of a data file created by its associated software program. For example, Microsoft Excel® produces its output

as '.xls' files by default, which is the native format of Excel. Microsoft Word® produces native files with a '.doc' extension, which is the native format of Word.

8. The term "Producing Party" means any party to the Action who produces documents or information under this Order.

9. The term "Receiving Party" means any party to the Action who receives documents or information under this Order.

C. Format Protocol for Specific Types of Discoverable Electronic Information

1. **Documents in Hard Copy:** All documents that exist in hard copy shall be produced as black and white images at not less than 300 dpi resolution and shall be saved and produced in a Group IV compression single-page TIFF format file. The document's electronic image must convey the same information as if the subject document was produced in a hard copy form. Documents shall be generally produced as they are maintained in the ordinary course of business, including maintaining, to the extent possible with reasonable production steps, the documents and attachments or affixed notes as they existed in the original when creating the image file. Reasonable efforts shall be used to scan the pages or images at or near their original size and so that the print or image appears straight, and not skewed. Physically oversized originals, however, will appear reduced. Sometimes reducing image size may be necessary in order to display Bates Numbers without obscuring text.

2. **Electronic Documents:** All documents existing in electronic format shall be produced in a Group IV TIFF compression, single-page, black and white format file with Metadata. The Metadata will be contained in a separate load file or files (*see infra*). The parties shall only remove any information from the Metadata fields described below in Section C(5) on

the grounds of privilege or attorney work product. The parties will take reasonable steps to produce any documents attached to an email contemporaneously and sequentially after the parent email.

3. **Databases:** The parties shall identify and describe databases that contain material responsive to document requests when responding to document requests. The description shall include a summary of the type of information available from the database and a description of the work necessary to provide responsive information from the database. The parties shall cooperate to produce responsive information from the database to the extent reasonably accessible considering undue burden and cost. In addition, the parties shall cooperate to ensure that the information from the Database that is produced is produced in a form in which it is ordinarily maintained or in a form that is reasonably useable, depending on burden, cost, and need.

4. **Production of Native Files or Hard Copies**: The parties have agreed that documents will be produced in tiff format absent a showing of a specific need for specified documents produced in a different form. After reviewing the tiff production, a Receiving Party can request a color hard copy or native format of any documents by identifying such documents by Bates Number range. Upon receiving such request, the Producing Party shall generally produce the document or otherwise respond within ten (10) days of receipt of the request, but in no instance shall not produce the document or otherwise respond within thirty (30) days of receipt of the request. Parties shall cooperate with each other to facilitate the acquisition of appropriate licenses and technical information to review files produced in native format.

5. **Metadata:** The parties were unable to reach agreement on this issue and make the following proposals:

Plaintiffs' Proposal: (1) Defendants shall identify and produce metadata for corresponding native electronic files. Specifically, all electronic documents, such as word processing documents, e-mails, spreadsheets and other similar type materials, should be produced as single-page TWF images with the accompanying extracted text and metadata (date, title, authors, recipient, subject, *etc*.).

a. Defendants shall produce a list of all available metadata within twenty (20) days of the date of this Order.

b. Plaintiffs may request additional metadata or production of the specific programs that were used to create the corresponding native electronic files if they are unable to access, search, or translate the metadata as it is produced, or if they believe, in good faith, that additional metadata is discoverable after reviewing Defendants' production.

c. For each electronic document produced, a "load file" shall be produced identifying the following pieces of information:

(1) Title;

(2) Subject;

(3) To, CC, BCC (for emails) Recipient(s) (for other types);

(4) Last Date Modified;

(5) Date Created;

(6) Document Date (if different from Date Created);

(7) Category/Subcategory (type of item);

(8) Original document/file path;

(9) Date;

(10) Original file name;

(11) Source (original system or department where stored);

(12) Search (what search terms or other identified the document as relevant);

(13) Starting Bates number;

(14) Ending Bates number;

(15) Original person responsible for maintaining (custodian);

(16) Whether the produced version is an original or copy;

(17) Revision history;

(18) Date produced for discovery;

(19) Whether the document was previously produced in former discovery phase (e.g. whether it came up again in a new search);

(20) The system and software program used; and

(21) All other pieces of meta-data for native electronic documents as referenced above.

2. System-Level Metadata: Defendants shall identify all available system-level metadata within twenty (20) days of the date of this Order. Such data may include, but is not limited to, backup and archival data, computer system data, and computer access data. All copies of computer files for production shall be created

in such a way as to preserve or record the original directory structure and system-level meta-data (file name and path, create, modify, and access date and time, and size).

Defendants' Proposal: The parties shall identify and produce Metadata, as set forth below, for all Electronic Documents. Specifically, all Electronic Documents should be produced as single-page TIFF images with accompanying Metadata, to the extent such Metadata information exists in the original Electronic Document.

a. For each Electronic Document produced, a load file or files shall be produced identifying the following pieces of information, to the extent they exist in the original Electronic Document:

i. Title or Subject;

ii. To, CC, BCC or Recipient(s);

iii. Last Date Modified;

iv. Date Created;

v. Document Date (if different from Date Created);

vi. Starting Bates number;

vii. Ending Bates number;

viii. Custodian;

ix. Date produced for discovery;

x. Document type;

xi. Location; and

xii. File path.

E. Document/Data Identification Conventions for All Types of Discoverable Electronic Information

1. **Production Media:** All discoverable electronic information that is produced in this coordinated proceeding by any party shall initially be produced in electronic image format in the manner provided herein, on a hard drive, CD, DVD, or other mutually agreeable format.

2. **Bates Numbering:** Each individual piece of computer media produced must be clearly labeled with a Bates Number that is indelibly written on, or affixed to, both the media itself and any enclosure or case produced with the media.

a. Each page of the scanned document shall have this legible, unique document identifier electronically "burned" onto the image. Reasonable steps shall be taken to place the Bates Number at a location that does not obscure any information from the source document.

b. There shall be no other legend or stamp placed on the document image unless a document qualifies for designation as confidential (to be addressed by another order). In such case, the document image may also have burned in an appropriate legend regarding confidentiality at a location that does not obscure any information from the source document. If the confidentiality designation of a document is later changed, the Producing Party shall produce a new version of the document with the appropriate confidentiality legend.

c. Reasonable efforts should be made to have the document file names correspond with the Bates number imprinted on the document. For

example, if the Bates number "BL000000I" was imprinted, the document would bear the name "BL0000001.tif."

d. Bates numbers should contain at least eight (8) numeric digits.

3. **File Naming Conventions**: Unless impracticable or otherwise agreed upon, each document image file shall be named with the unique Bates Number of the first page of the corresponding TIFF image, followed by the extension "TIF." Each CD-ROM or DVD-ROM of documents, data, or email produced by a party shall be uniquely named with a sequential number that includes the producing party's unique alpha identifier (e.g., "BAYER1," "BAYER2," *etc*.). The parties will cooperate to ensure that the logistics of production are efficient and economical, including production media, and naming conventions and procedures for directories and subdirectories.

4. **Privilege and Attorney Work Product**: Producing Parties shall only withhold discoverable electronic information on the basis of privilege or attorney work-product within the bounds of applicable law or the Orders of this Court. All documents withheld or redacted on the grounds of privilege or attorney work product shall be described on a privilege log. Any privilege logs shall be produced on a rolling basis and shall not delay the production of nonprivileged documents because of the preparation of a privilege log, however, a privilege log for documents redacted on privilege or attorney work product grounds shall generally be produced within sixty (60) days of production of the redacted document. Privilege Logs shall be produced in both .PDF and Excel Spreadsheet format, and shall contain, at least, the following information for each document withheld or redacted on the grounds of privilege or attorney client work product: Bates Range, Date, Applicable Privilege, Subject, and Names associated

with the document (with Author, Recipient, Carbon Copy Recipient, and Blind Carbon Copy Recipient if apparent from the document).

5. **Delivery:**

a. All computer media must be properly packaged to ensure safe shipping and handling.

b. If any piece of media produced is known to have any physical defect, electronic defect, or damaged data, or is infected with any virus or other harmful software of any kind, it should be clearly labeled so that appropriate care can be taken during its examination.

c. All computer media that is reasonably capable of being write-protected should be write-protected before production.

F. Resolution of Disputes Concerning Electronic Discovery

1. All disputes regarding discovery shall be addressed by the parties in a conference prior to the filing of any motion with the Court.

2. If the parties are unable to resolve the dispute, an appropriate motion may be made to the Court at that time.

3. Notwithstanding any provision set forth above, any party may apply to the Court for relief, but only after first meeting and conferring in good faith with the other party to attempt to resolve or otherwise narrow any dispute, and after giving sufficient notice to be heard.

4. Because of the potential for a large number of documents to be produced, it may not be possible to review the images immediately upon production. If any problems are encountered with imaged document(s), they shall be identified by the requesting party and

thereafter the parties will attempt to mutually resolve the problem, unless otherwise agreed upon by the parties or *sua sponte* ordered by the Court.

G. Inadvertent Production of Documents Subject to Privilege or Attorney Work Product Protections.

In the event that one of the law firms that is counsel of record in this action learns or discovers that a document subject to immunity from discovery on the basis of attorney-client privilege, work product, or other valid basis has been produced inadvertently, counsel shall notify the Receiving Party or parties in writing within thirty (30) days after so learning or discovering that such inadvertent production has been made. The inadvertently-disclosed documents and all copies thereof shall be returned to the Producing Party and the Receiving Party shall not, without good cause shown, seek an order compelling production of the inadvertently-disclosed documents on the ground that the Producing Party has waived or is otherwise estopped from asserting the applicable privilege or immunity on the basis that the document has been voluntarily produced. Such inadvertent disclosure shall not result in the waiver of any associated privilege, provided that the Producing Party has given timely notice as provided in this paragraph. Counsel shall cooperate to restore the confidentiality of any such inadvertently produced information.

Respectfully Submitted,

/s/ *Don M. Downing*

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/s/ *Terry Lueckenhoff*
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Liaison Counsel For Defendants

IT IS SO ORDERED this ___ day of _____, 2007.

The Honorable Catherine D. Perry
United States District Judge

10750

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED RICE LITIGATION	)	**4:06 MD 1811 CDP**
	)	**ALL CASES**

AGREED ORDER REGARDING PRESERVATION OF COMMUNICATIONS, DOCUMENTS, ELECTRONIC DATA, AND OTHER TANGIBLE ITEMS

This Agreed Order Regarding Preservation of Communications, Documents, Electronic Data, and Other Tangible Items ("Preservation Order") governs the Parties in the above-captioned consolidated MDL Proceedings, including individual cases during their pendency in MDL No. 1811 (the "Action"). Pursuant to the Court's duty to supervise pretrial proceedings in this Action, including discovery, and pursuant to the Court's inherent powers, the Court hereby issues the following agreed Preservation Order. The Parties recognize that they must take steps to preserve documents and other materials relevant to the claims and defenses asserted in this Action, or that may lead to the discovery of admissible evidence in this Action. The Parties recognize that the law with respect to preservation efforts is not fully developed and also recognize that such preservation efforts can become unduly burdensome and unreasonably costly unless those efforts (a) are targeted to those documents reasonably likely to be relevant or lead to the discovery of relevant evidence related to the issues in this matter; and (b) take account of the unique preservation issues presented by electronically stored information. The Parties agree that

EXHIBIT C

these Guidelines define the scope of their preservation obligations for the purposes of this litigation.

I. DEFINITIONS

For the purposes of this Document Preservation Order, the following definitions shall apply:

1. The term "Active File", as used herein, means any electronic data file that can be used by an electronic data processing system in any manner without modification or reconstruction. An Active File is any electronic data file that has not been deleted or otherwise destroyed and/or damaged and which is readily visible to the operating system and/or the software with which it was created.

2. The term "Communication(s)," as used herein, means the transmission, sending, or receipt of information of any kind (in the form of facts, ideas, inquiries, or otherwise), by or through any means including, but not limited to, speech, writings, language (machine, foreign or otherwise), computer electronics of any kind (including, but not limited to, e-mail, or instant messaging), magnetic tape, videotape, photographs, graphs, symbols, signs, magnetic or optical disks, floppy disks, compact discs, CD-ROM discs, other removable or transportable media, sound, radio, or video signals, telecommunication, telephone, teletype, facsimile, telegram, microfilm, microfiche, photographic film of all types, or other media of any kind.

3. The term "Computer," as used herein, shall include, but is not limited to, microchips, microcomputers (also known as personal computers), laptop computers, portable computers, notebook computers, palmtop computers (also known as personal digital assistants or PDAs), minicomputers, and mainframe computers.

4. The term “Computer System,,” as used herein, when used in reference to any computer, includes, but is not limited to, the following information: (a) computer type, brand and model; (b) brand & version of all software, including operating system, private-and custom developed applications, commercial applications, or shareware; and (c) communications capability, including asynchronous or synchronous, including, but not limited to, terminal to mainframe emulation, data download or upload capability to mainframe, and computer to computer connections via network modem or direct connection.

5. The term “Concerning,” as used herein, means evidencing, reflecting, incorporating, effecting, including, or otherwise pertaining, either directly or indirectly, or being in any way logically or factually connected with, the subject matter of the inquiry or request.

6. The term “Custodian,” as used herein, refers to any officer, director, employee, or agent of the Parties known or believed to possess Potentially Relevant Information.

7. The term “Data,” as used herein, is equivalent to the term “Electronic Data” as defined herein.

8. The term “Deleted File,” as used herein, means any electronic data file that has been deleted or deleted from the electronic media on which it resided, including but not limited to any file whose File Allocation Table (FAT) entry has been modified to indicate the file as being deleted and/or which is not readily visible to the operating system and/or the software with which it was produced.

9. The term “Document(s),” as used herein, is synonymous and equal in scope to usage of this term in Fed. R. Civ. P. 34(a) and to the terms “[w]ritings and recordings,” “photographs,” “original” and “duplicate” defined in Fed. R. Evid. 1001. Document means the original (or an identical duplicate if the original is not available), and any non-identical copies

(whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description that are fixed in any medium upon which intelligence or information can be recorded or retrieved – including, but not limited to documents fixed in tangible media or electronically or digitally stored on disk or tape in a native format. This includes, without limitation, all Electronic Data, Active Files, and Communications. "Document(s)" further includes the original and each non-identical copy of any book, pamphlet, periodical, letter, memorandum, diary, calendar, telex, electronic mail message, instant message, telegram, cable, report, record, contract, agreement, study, handwritten note, draft, working paper, chart, paper, print, record, drawing, sketch, graph, index, list, tape, stenographic recording, tape recording, photograph, microfilm, invoice, bill, order form, receipt, financial statement, accounting entry sheet or data processing card, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced, reproduced, or stored, which is in your possession, custody, or control.

10. The term "Electronic Data," as used herein, means the original (or identical duplicate when the original is not available), and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description whether inscribed by mechanical, facsimile, electronic, magnetic, digital, or other means. Electronic data includes, by way of example only, computer programs (whether private, commercial or work-in-progress), programming notes or instructions, activity listings of electronic mail receipts or transmittals, output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail, instant

messaging, operating systems, source code of all types, peripheral drivers, batch files, ASCII files, and any and all miscellaneous files or file fragments, regardless of the media on which they reside and regardless of whether such electronic data consists in an Active File, Deleted File, or file fragment. Electronic data includes any and all items stored on computer memories, hard disks, floppy disks, CD-ROMs, DVDs, removable media such as Zip disks, Snap servers, Jaz cartridges, and their equivalent, magnetic tapes of all types, microfiche, punched cards, punched tape, computer chips, on or in any other vehicle for digital data storage or transmittal. The term electronic data also includes the file, folder tabs or containers and labels appended to, or associated with, any physical storage device associated with each original or copy thereof.

11. The term "Electronic Media," as used herein, means any magnetic or other storage device used to record electronic data. Electronic media devices may include, but are not limited to, computer memories, hard disks, floppy disks, Snap servers, DVDs, CD-ROM, and removable media and their equivalent, magnetic tapes of all types, microfiche, punched cards, punched tape, computer chips, and any other medium for the storage or transmission of digital data.

12. The term "Employee(s)," as used herein, means any person who acted or purported to act on behalf of another person or persons, including, but not limited to, all past and present directors, officers, executives, agents, representatives, attorneys, and accountants.

13. The term "File Fragment," as used herein, means any electronic data file that exists as a subset of an original Active File. A file fragment may be active or deleted. The cause of fragmentation can include, but is not limited to the execution of ordinary file management routines such as the creation of new files over parts of previously Deleted Files, the creation of files on disks which do not have enough contiguous blocks to write the file from beginning to

end, where the file has been split up between several sections of the disk (each piece a fragment). Other causes include manual intervention, electronic surges, or physical defects on electronic media.

14. The term "LLRICE," as used herein, refers to long grain rice containing Bayer's regulated or otherwise restricted genetically-modified seed traits, two of which are LLRICE 601 and LLRICE 604 and the rice seeds or crops containing those traits.

15. The term "Native Format," as used herein, means the default format of a data file created by its associated software program. For example, Microsoft Excel® produces its output as '.xls' files by default, which is the native format of Excel. Microsoft Word® produces native files with a '.doc' extension, which is the native format of Word.

16. The term "Network," as used herein, means any hardware or software combination that connects two or more computers together and which allows the computers to share or transfer data between them. For the purposes of this definition, the connection between or among the microcomputers need not be either physical or direct (*i.e.*, wireless networks, and sharing or transferring data via indirect routes utilizing modems and phone company facilities). In addition, there need not be a central file or data server nor a central network operating system in place (i.e., peer-to-peer networks and networks utilizing a mainframe host to facilitate data transfer).

17. The parties to this proposed Agreed Order have not agreed on the definition of the term "Parties," for the purposes of this Agreed Order, and thus submit the following competing proposals for the Court's consideration:

Plaintiffs' Proposal: The term "Parties," as used herein, refers to: (a) the individuals and entities named as plaintiffs or defendants in the Master Consolidated Class Action

Complaint filed in this action on May 17, 2007, as well as those named in any future amendments thereof or proffered as class representatives (defined as "Plaintiffs" herein, infra); and (b) the individuals and entities named as plaintiffs or defendants in any cases in the Action filed by plaintiffs other than rice producers, as well as those individuals or entities named in any future amendments to those non-producer cases, or in new non-producer cases filed or otherwise transferred and consolidated into the Action.

Defendants' Proposal: The term "Parties," as used herein, refers to the individuals and entities that have sued or have been properly served in the Action.

18. The parties to this proposed Agreed Order have not agreed on the definition of the term "Plaintiffs," for the purposes of this Agreed Order, and thus submit the following competing proposals for the Court's consideration:

Plaintiffs' Proposal: The term "Plaintiff(s)," as used herein, refers to the plaintiffs specifically named in the Consolidated Complaint and all non-producer actions in other lawsuits in the Action and their officers, directors, agents, and employees.

Defendants' Proposal: The term "Plaintiff(s)," as used herein, refers to the plaintiffs in any case in this Action and their officers, directors, agents, and employees.

19. The term "Policy," as used herein, means any rule, procedure, practice, or course of conduct, whether formal or informal, written or unwritten, recorded or unrecorded, which was recognized or followed, explicitly or implicitly, by any party to this Action.

20. The term "Potentially Relevant Information," as used herein, means a document or material containing information within the scope of the categories set forth in paragraph II(A) below.

21. The term "Produced," as used herein, with respect to any document, shall include authored, dictated, edited, reviewed, or approved, in whole or in part.

22. The term "Rotation," as used herein, means any plan, Policy or scheme that involves the re-use of an electronic media device after it has been used for backup, archival or other electronic data storage purposes, particularly if such re-use results in the alteration and/or destruction of the electronic data residing on the device prior to it being re-used.

II. PRESERVATION ORDER

A. The Parties shall take reasonable steps to preserve all written or recorded Communications, Documents, Electronic Data, and other tangible objects within their possession, custody or control containing information that is relevant to the allegations and defenses in this Action or may lead to the discovery of admissible evidence in this Action, including but not limited to written or recorded Communications, Documents, Electronic Data and other tangible objects related to:

(1) LLRICE, including but not limited to research, development, field trials, testing, registration, post-testing destruction, volunteer monitoring, audit and inspection, contracts, communications with third parties (including parents, predecessors, subsidiaries, agents, and other affiliates), communications with governmental or administrative bodies, and other communications relating thereto;

(2) Initial notification, sampling, investigation, and management of the LLRICE biotechnology traces identified in 2006 and/or 2007 or prior in samples of commercial rice in the United States;

(3) The purchase, cultivation, possession, sale, booking, listing, transfer, or resale of rice or rice seed by Plaintiffs; and

(4) Any alleged damages claimed by Plaintiffs including information related to the revenue, costs, profits, business operation and planning documents, recalls, storage, cleaning, lost profits, goodwill, or business opportunity from any entity or individual alleged to be affected by LLRICE.

In addition, the Parties agree that Plaintiffs shall take reasonable steps to retain — to the extent in their possession, custody, or control — samples of rice or rice seed sufficient to determine the variety, type, quality, and LLRICE content of any rice or rice seed purchased, cultivated, sold, or transferred by any entity or individual alleged to be affected by Defendants' conduct. The fact that a particular document or tangible object may be included in the scope of this Order is not intended to, and does not, establish or suggest that the document is discoverable, relevant to, or admissible in this matter.

B. The preservation obligations set forth in this Order apply to currently-existing Communications, Documents, Electronic Data, and other tangible objects within the Parties' possession, custody, or control, as well as Communications, Documents, Electronic Data, and other tangible objects generated, produced, or otherwise created in the future during the pendency of this Action until an agreement can be reached among the Parties regarding a cutoff date.

C. Notwithstanding any other provision of this Order, persons may generate business documents without preserving dictation, drafts, interim versions or other temporary compilations of information if such documents would not have been preserved in the ordinary course of business.

D. The Parties must take reasonable steps to preserve all Communications and Documents in their original condition and Electronic Data in its native format. Such steps include, without limitation:

(1) Taking reasonable steps to identify all Custodians;

(2) Directing all Custodians and appropriate IT personnel to preserve Potentially Relevant Information (this obligation does not require the Parties provide a copy of this order to Custodians so long as reasonable steps are taken to inform Custodians of the substantive provisions of this Order, as well as their individual obligations thereunder);

(3) Taking reasonable steps to preserve the oldest known complete backup of Active Files reasonably expected to contain information within the scope of this Order on servers (once this obligation is satisfied, Parties may continue to engage in the routine rotation of backup tapes going forward);

(4) Taking reasonable steps to cease all [routine] [nonroutine] defragmentation, compression, purging, or reformatting of digital media that may contain Electronic Data that may be subject to discovery until all Active Files containing information within the scope of this Order have been copied;

(5) Taking reasonable steps to suspend routine document preservation or retention Policies that may lead to the destruction of information within the scope of this Order;

(6) Taking reasonable steps to promptly collect and preserve in their current state all Active Files from Electronic Data sources that contain data that is within the scope of this Order. For all Custodians, a complete backup will be made of all Active Files from their current Computer without altering metadata. In addition, a complete backup will be made of all Active Files that contain information within the scope of this Order identified by Custodians that reside on any servers without altering metadata;

(7) Taking reasonable steps to promptly collect any transcripts or text files reflecting the contents of any voicemail systems, telephone conversation recording devices, and other voice recording systems that may exist; and

(8) Taking reasonable steps to preserve all security keys, encryption/decryption information, and Policies that exist or are related to any data contemplated by this Order for the sole purpose of accessing the data.

The Parties shall take reasonable steps to ensure that Communications, Documents, Electronic Data and other tangible objects that are subject to this Order are not destroyed, removed, mutilated, altered, concealed, deleted or otherwise disposed of. However, any party may delete or recycle Active Files electronically stored on servers or hard drives reasonably likely to contain Documents after the party has made and secured a copy of the Active Files which contain information within the scope of this Order contained on said data storage device. A party need not preserve information electronically stored on servers, hard drives, or similar locations not reasonably likely to contain information within the scope of this Order.

E. Absent exceptional circumstances, the Parties will not seek, and the Court will not impose, sanctions on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

F. This Order shall continue in full force and effect until further Order of this Court.

BY THE COURT:

_____

THE HONORABLE CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE GENETICALLY MODIFIED RICE LITIGATION	)	**4:06 MD 1811 CDP**
	)	**ALL CASES**

CONFIDENTIALITY AGREEMENT AND [PROPOSED] PROTECTIVE ORDER

IT IS STIPULATED AND AGREED BY THE PARTIES HERETO THAT:

1. **Scope**. This Confidentiality Agreement and Protective Order ("Confidentiality Agreement") governs the treatment of all documents and other products of discovery, all information derived therefrom and including, but not limited to, all copies, excerpts or summaries thereof of any depositions, deposition exhibits, interrogatory answers, responses to requests for admission and any other discovery authorized by the Federal Rules of Civil Procedure, as well as any other disclosed information (collectively "Discovery Material") produced by any party or non-party ("Producing Party") in the above-captioned consolidated MDL Proceedings, including individual cases during their pendency in MDL No. 1811 (the "Action"). In the event of remand or transfer to other courts, this Order will remain in effect in all respects until adopted by the remand or transferee court or replaced by a successor confidentiality order. This Confidentiality Agreement governs Confidential and Highly Confidential Discovery Materials, referred to generally as "Confidential Information."

EXHIBIT D

2. **Limitation on Use**. Discovery Material may be used solely for the litigation of actions under MDL No. 1811, presently entitled In re Genetically Modified Rice Litigation, including such actions after remand or transfer to other courts, as discussed in paragraph 1, and any appeals of this litigation and may be disclosed only under the circumstances and to the persons specifically provided for in this or subsequent Court Orders, or with the prior written consent of the Producing Party with respect to specifically identified Confidential Information and may not be used for any other purpose, including but not limited to,

a. The prosecution or defense of other actions not subject to this Confidentiality Agreement;

b. In any proceeding before or application to any government agency;

c. Disclosure to media or competitors of parties to the Action;

d. Any purpose other than the prosecution of this action.

3. **Confidential Discovery Material**. Any Producing Party may designate as "Confidential" any Discovery Material that it believes in good faith contains legally protectable information in accordance with Rule 26(c) of the Federal Rules of Civil Procedure, such as:

a. Non-public information regarding the identity of and marketing information regarding customers, growers, elevators, vendors, contractors, suppliers, and other non-parties with whom the parties do business;

b. Proprietary licensing, distribution, marketing, design, redevelopment, research, test data and manufacturing information regarding products or technology, whether or not previously or currently marketed or under development;

c. Clinical studies;

d. Competitor and competitor product or technology information, including third party product or technology licenses;

e. Production information, including, but not limited to trade secrets or confidential research, development, or commercial information;

f. Financial information not publicly filed with any federal or state regulatory authority;

g. Information submitted to the EPA, FDA, USDA, or any other governmental agency, that under applicable regulations is exempt from disclosure under the Freedom of Information Act;

h. Information that a party obtained from another entity and which the party is required to keep confidential pursuant to an agreement entered into with such entity in the regular course of business;

i. Information contained in insurance policies that may cover this action;

j. Personnel compensation, evaluations or other private employment information; or

k. Confidential or proprietary information about affiliates, parents, subsidiaries or third parties with whom the Parties to this action have had or have endeavored to have business relationships.

All Discovery Material so designated shall be referred to in this Confidentiality Agreement as "Confidential Discovery Material" and shall be handled in strict accordance with the terms of this Confidentiality Agreement.

4. **Highly Confidential Discovery Material**. Any Producing Party may designate any Discovery Material as "Highly Confidential" if such party in good faith believes that such

Discovery Material contains Highly Confidential Information. Highly Confidential information means information not otherwise publicly available that the Producing Party believes, in good faith, would harm the competitive position of the producing person or party if the information were to be disclosed other than as permitted herein, containing:

a. current and future business and marketing plans;

b. research and development activities (including past research and development);

c. work with third party collaborators or licensees under obligations of confidentiality;

d. financial information relating to revenues, costs, and profits;

e. correspondence with or submissions to government entities that was designated confidential at the time of transmittal and remains confidential as of the date of production; and

f. any other similar information.

Moreover, any document obtained from the FSA, USDA, CCC, or any other government entity that relates to any plaintiff shall be designated and treated as "Highly Confidential" discovery material.

All Discovery Material so designated shall be referred to in this Confidentiality Agreement as "Highly Confidential Discovery Material" and shall be handled in strict accordance with the terms of this Confidentiality Agreement.

5. **Designation of Confidentiality**. All Confidential Discovery Material in the form of physical objects or documents shall be designated, as appropriate, by stamping or affixing, in an unobtrusive manner, the legend "**CONFIDENTIAL INFORMATION SUBJECT TO**

PROTECTIVE ORDER" or "**CONFIDENTIAL**" to all pages of any document containing Confidential Discovery Material and "**HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY**" or "**HIGHLY CONFIDENTIAL**" to all pages of any document containing Highly Confidential Discovery Material. Materials such as videotapes, audio tapes, and electronic media such as computer disks, compact discs, or DVDs, which contain or include Confidential or Highly Confidential Discovery Material, shall be designated by affixing the appropriate legend on the package thereof. Any such designation shall subject the document, its contents, or any portion thereof, to this Confidentiality Agreement without any further act on the part of the Producing Party.

a. A Producing Party may, on the record of a deposition, or within thirty (30) days after receipt of the transcript(s) of such deposition, designate in good faith any portion or portions of such transcript(s), including exhibits and videotape, as Confidential or Highly Confidential Discovery Material under the terms of this Protective Order. Until the above-referenced thirty day period expires, the complete deposition transcript and videotape shall be treated as Highly Confidential Discovery Material unless otherwise specified in writing or on the record of the deposition by the Producing Party. All copies of deposition transcripts that contain information or material designated as Confidential or Highly Confidential Discovery Material shall be prominently marked "Confidential" or "Highly Confidential" on the cover thereof and on each page that contains Confidential or Highly Confidential Discovery Material and, if filed

with the Court, the portions of such transcripts so designated shall be filed in accordance with the provisions of paragraph 12, *infra*.

b. In the case of documents being made available for inspection, at the request of counsel for Producing Party, all documents and things produced for inspection during discovery shall initially be considered to contain wholly Highly Confidential Discovery Material and shall be produced for inspection only to persons representing the receiving party described in paragraph 6(b) of this Confidentiality Agreement. All such documents and things initially shall be fully subject to the limitations on disclosure and use of Highly Confidential Discovery Material in this Confidentiality Agreement. At any inspection of the original documents and things, if requested, the Receiving Party shall not make copies of the documents produced, and if notes are made therefrom other than a list identifying documents or things to be copied or otherwise furnished, such notes shall be treated as Highly Confidential Discovery Material. Copies of documents and things requested by the Receiving Party shall be made, in accordance with normal production procedures, and delivered to the Receiving Party; such process shall be performed promptly and shall not await the production or inspection of other documents or things.

6. **Who May Access Confidential Discovery Material**. Confidential Discovery Material may only be disclosed, summarized, described, or otherwise communicated or made available in whole or in part without written consent from the Producing Party ***only*** to the following persons:

a. The parties to this litigation, including Lead Plaintiffs and Class Representatives, ***provided that*** such person(s) execute an undertaking to be bound by this Confidentiality Agreement in the form attached hereto as Appendix A (the "Undertaking") prior to disclosure and a copy of such signed Undertaking is retained by counsel for the party making such disclosures so that it may be shown to counsel for the Producing Party if a request therefore is made;

b. Outside counsel of record for the respective parties to this litigation who have executed this agreement, including attorneys, paraprofessionals, and employees of such law firms;

c. Third party experts or consultants retained to assist counsel for the parties described in subparagraph 6(a), ***provided that*** any such experts or consultants execute the Undertaking prior to any disclosure to such expert(s) or consultant(s), and that a copy of such signed Undertaking is retained by counsel for the party making disclosure to such expert(s) or consultant(s). For testifying experts, upon their designation as a testifying expert, the Undertaking shall be provided to the Producing Party contemporaneously with the service of their expert report. Disclosure of Confidential or Highly Confidential Discovery Material to an expert or consultant shall not constitute a designation of the person as an expert whose opinions may be presented at trial. Discovery of consultants and experts will be taken in accordance with the Federal Rules of Civil Procedure. Unless specific written approval is given by the Producing Parties, under no circumstance can

Highly Confidential Discovery Material be disclosed to consultants or experts who are parties or directors, officers, or employees of parties to this action.

d. Employees, officers and directors of each party to the extent that such person(s) are assisting in the prosecution or defense of the Action, ***provided that*** such person(s) execute the Undertaking prior to disclosure and a copy of such signed Undertaking is retained by counsel for the party making such disclosures so that it may be shown to counsel for the Producing Party if a request therefore is made;

e. Potential non-party witnesses in this Action and their counsel, if separate from counsel to the parties, when such disclosure is reasonably necessary for the purposes of trial preparation, factual investigation, or discovery, ***provided that*** any such persons and any such counsel execute the Undertaking prior to disclosure and a copy of such signed Undertaking is retained by counsel for the party making disclosure so that it may be shown to counsel for the Producing Party if a request therefore is made;

f. Any witness deposed in this Action, who shall be provided prior to or at the outset of his, hers, or its deposition with a copy of this Confidentiality Agreement and such person, on the record at the deposition, shall be informed that he, she, or it (and such person's counsel, if any), is bound by the terms of this Confidentiality Agreement by virtue of an Order of the Court, and shall be requested to execute the Undertaking prior to disclosure. Counsel for the Producing Party shall be shown the document in the deposition immediately prior to providing the document to the witness.

g. Stenographers or court reporters who record testimony taken at any time or place in the course of this Action or persons operating video recording equipment of and at such testimony; and

h. The Court, Court personnel, and any other person designated by the Court in this Action in the interest of justice, upon such terms as the Court may deem proper.

i. Commercial copy services, translators, data entry and computer support organizations, and such persons who assist in preparing demonstrative trial exhibits, hired by and assisting outside counsel for a party, provided such commercial organizations are made aware of and agree to abide by the provisions of this Confidentiality Agreement.

j. In-house counsel (and any paralegal or support staff working for and directly reporting to such counsel) for any party, so long as prior to disclosure of any Highly Confidential Discovery Material such counsel execute a copy of the Undertaking and a declaration setting forth his or her current job responsibilities and providing adequate assurance to the other Party that the declarant's access to such documents will not present undue business or competitive concerns for such other Party. No Confidential or Highly Confidential Discovery Material can be provided until 10 days after the Producing Party has received the declaration (or electronic copy thereof) or any objection to disclosure raised with the Court is resolved, as set forth below. If the Producing Party objects to disclosure to the in house counsel, the Producing Party may seek relief from the Court and must show with particularity that it will be prejudiced by disclosure of the Highly

Confidential Information to that individual. If such a motion is filed, there can be no further disclosure to the individuals until the motion is finally decided. Whenever Highly Confidential Discovery Material is disclosed to in house counsel under this paragraph, those persons agree to segregate documents containing such information from other documents in their legal departments.

7. **Who May Access Highly Confidential Discovery Material**. Highly Confidential Discovery Material may be disclosed, summarized, described, or otherwise communicated or made available in whole or in part without written consent from the Producing Party ***only*** to persons described in subparagraphs 6(b), (c), (f), (g), (h), (i), and (j) and ***only*** to the extent necessary for those persons to assist outside counsel in the prosecution or defense of this Action. In addition, named producer plaintiffs in the Consolidated Complaint may review Highly Confidential Material only (a) after signing an Undertaking and (b) in the presence of their counsel. Under no circumstances may the named producer plaintiffs copy, possess (outside the presence of their attorneys), summarize, or take notes regarding any Highly Confidential Material.

8. **Exclusion from Depositions**. Counsel for the witness or counsel for any party shall have the right to exclude from depositions, other than the deponent and deponent's counsel, any person who is not authorized by this Confidentiality Agreement to receive documents or information designated as Confidential or Highly Confidential Discovery Material. Such right of exclusion shall be applicable only during periods of examination or testimony directed to or related to Confidential or Highly Confidential Discovery Information.

9. Third Party Requests for Information. If any Receiving Party is (a) subpoenaed in another action, (b) served with a demand in another action to which it is a party, or (c) served with any legal process by one not a party to this Action (including any federal state or foreign government agency), seeking Discovery Material which was produced or designated as Confidential or Highly Confidential by someone other than the Receiving Party, the Receiving Party upon determining that such Discovery Materials are within the scope of the demand, subpoena, or legal process, shall give written notice, at the earliest possible time, of such subpoena, demand or legal process, to those who produced or designated the material Confidential or Highly Confidential. The Receiving Party shall also respond to the subpoena, demand, or legal process by setting forth the existence of this Confidentiality Agreement and shall cooperate with the Producing Party so that the Producing Party can appear and object to production and in no event shall ever provide any documents prior to giving written notice to the Producing Party.

10. Inadvertent Production or Designation. The inadvertent failure to stamp a document, or a portion thereof, with the Confidential or Highly Confidential designation in no way alters or waives the protected and confidential nature of the document otherwise deserving of such a designation and does not remove it from the scope of this Confidentiality Agreement, provided that the Producing Party notifies the Receiving Party, in writing, within thirty (30) days after becoming aware that the Confidential or Highly Confidential Information was not properly designated. Such written notice shall identify with specificity the information or documents the Producing Party is then designating to be Confidential or Highly Confidential Information and shall promptly provide a replacement copy of such material with the appropriate "Confidential"

of "Highly Confidential" designation thereupon. Treatment of inadvertently produced confidential material in a manner inconsistent with this Confidentiality Agreement prior to notice of such inadvertent production is not a breach of this Confidentiality Agreement. Counsel shall cooperate to restore the confidentiality of any such inadvertently produced information.

11. Inadvertent Production of Documents Subject to Immunity from Discovery. In the event that one of the law firms that is counsel of record in this action learns or discovers that a document subject to immunity from discovery on the basis of attorney-client privilege, work product, or other valid basis has been inadvertently produced, counsel for Producing Party shall notify the Receiving Party or parties in writing within thirty (30) days after so learning or discovering that such inadvertent production has been made. The inadvertently disclosed documents and all copies thereof shall be returned to the Producing Party and the Receiving Party shall not, without good cause shown, seek an order compelling production of the inadvertently disclosed documents on the ground that the Producing Party has waived or is otherwise estopped from asserting the applicable privilege or immunity on the basis that the document has been voluntarily produced. Such inadvertent disclosure shall not result in the waiver of any associated privilege, provided that the Producing Party has given timely notice as provided in this paragraph. Counsel shall cooperate to restore the confidentiality of any such inadvertently produced information.

12. Procedure for Filing with the Court. Any party seeking to file Confidential or Highly Confidential Discovery Material shall do so under seal. Such Confidential or Highly Confidential Discovery Material shall be labeled on the cover:

CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER

and, unless otherwise agreed by counsel or directed by the Court, shall be filed in a sealed envelope and kept under seal and not disclosed to any person unless ordered by the Court in the Action.

13. **Procedure for Use in Court**. Confidential or Highly Confidential Discovery Material may be offered into evidence at trial or at any court hearing in open court, only after notice to the Producing Party identifying with specificity the Confidential or Highly Confidential Discovery Material to be used. The Producing Party may apply for an order that evidence be received *in camera* or under other less public circumstances to prevent unnecessary disclosure.

14. **Own Use**. Nothing in this Confidentiality Agreement shall be interpreted to prohibit or prevent the Producing Party from using or discussing its own Confidential or Highly Confidential Discovery Material in any way it sees fit to so use or discuss that material for any reason. Any such use or discussion of Confidential or Highly Confidential Discovery Material shall not be deemed a waiver of the terms of this Confidentiality Agreement.

15. **Effect on Discovery**. This Confidentiality Agreement shall not enlarge or affect the proper scope of discovery in this Action, nor shall this Confidentiality Agreement imply that Discovery Material designated as Confidential or Highly Confidential under the terms of this Confidentiality Agreement is properly discoverable, relevant or admissible in this Action or in any other litigation. Discovery Material produced in this Action can only be used in conjunction with this Action. Nothing in this Confidentiality Agreement shall be interpreted to require disclosure of materials which a party contends are protected from disclosure by the attorney-client privilege or the attorney work-product doctrine.

16. **Advice to Clients**. Nothing in this Confidentiality Agreement shall bar or otherwise restrict any attorney from rendering advice to his or her client with respect to this litigation and, in the course of rendering advice, referring to or relying generally on the examination of Confidential or Highly Confidential Information produced or exchanged; provided, however, that in rendering such advice and in otherwise communicating with his or her client, the attorney shall not disclose the contents of any Confidential or Highly Confidential Information produced by another party if that disclosure would be contrary to the terms of this Confidentiality Agreement.

17. **Dispute Resolution**. The following procedures shall apply to any disputes arising from the designation of Discovery Materials as confidential pursuant to this Confidentiality Agreement:

a. If a party in good faith disagrees with the Producing Party's Confidential or Highly Confidential designation, that party shall inform counsel for the Producing Party in writing of that disagreement within fourteen (14) days prior to the filing of the final pretrial order;

b. Upon written notification that a party disagrees with a confidential designation, counsel for the objecting party and the Producing Party will confer in a good faith effort to resolve the dispute without Court intervention;

c. If the dispute is not resolved within fifteen (15) days of the Producing Party's receipt of the objecting party's written notification, the objecting party may invoke the Court rules and procedures for raising discovery disputes. The

Producing Party shall bear the burden of proving that information has properly been designated as Confidential or Highly Confidential Discovery Material; and

d. Until such time as any such judicial process has been initiated and resolved, all parties receiving Confidential or Highly Confidential Discovery Material shall abide by the designation.

18. **Ongoing Protections**. Each document, material, or other thing, or portion thereof designated as Confidential or Highly Confidential shall retain that designation and shall remain subject to the terms of this Confidentiality Agreement until such time as the parties agree to the contrary or the Court renders a decision that a particular document, material, or other thing, or portion thereof is not subject to this Confidentiality Agreement, and any and all proceedings or interlocutory appeals challenging such decision have been concluded.

19. **Termination**. Except as otherwise agreed in writing by the parties, within one hundred eighty (180) days after the entry of a final judgment (including resolution of appeals or petitions for review), all Confidential and Highly Discovery Material supplied by a Producing Party and all copies thereof (including, without limitation, copies provided to testifying or consulting experts) shall, at the possessing party's choice, be returned to the Producing Party, or the party's counsel shall certify in writing to the Producing Party that all such materials in their possession, custody, or control have been destroyed. This Confidentiality Agreement shall survive the final termination of this Action with respect to any such Confidential or Highly Confidential Discovery Material. Outside counsel of record for the Receiving Party shall be entitled to retain court papers filed with the court, deposition and trial transcripts and exhibits, and their own attorney work product, provided that such counsel, and employees of such

counsel, shall not disclose any Confidential Information contained in such court papers, transcripts, or attorney work product to any person or entity except pursuant to a written agreement with the Producing Party. No portion of this provision requires the disclosure of attorney work product to any other party or counsel at any time. Under no circumstances can outside counsel maintain discovery responses designated Confidential or Highly Confidential from other parties served in this case without express written consent of the Producing Party.

20. Retrieval of Confidential Discovery Material from Court File. Within sixty (60) days after this case is closed in the District Court, any Producing Party may obtain the return of any previously-sealed or previously-restricted documents filed with the Clerk of Court by moving the Court for the return of such documents. Any documents that are not so withdrawn will be subject to the rules and procedures for such documents in the Eastern District of Missouri.

21. Joinder of Additional Parties. In the event additional parties join or are joined in this Action, they shall not have access to Confidential or Highly Confidential Discovery Information until the newly joined party or its counsel has executed and, at the request of any party, filed with the Court its agreement to be fully bound by this Confidentiality Agreement.

22. Amendment. Any party may apply to this Court, upon written notice, in accordance with the Rules of this Court, for an Order amending, modifying or vacating all provisions of this Confidentiality Agreement, except for the provisions in Paragraphs 11 and 19 *supra*. Nothing in this Confidentiality Agreement shall be construed as prejudicing any Producing Party's right to seek an agreement or Court Order providing additional confidentiality or other protections to any Confidential or Highly Confidential Discovery Material produced in

this Action. Until such agreement or order is obtained, however, this Confidentiality Agreement shall constitute the entire agreement of the parties with respect to the matters covered herein.

23. **Court Retains Jurisdiction**. This Confidentiality Agreement shall survive the final conclusion of this action and the Court shall maintain jurisdiction to enforce this Confidentiality Agreement. All persons receiving or given access to Confidential or Highly Confidential Discovery Material in accordance with the terms of this Confidentiality Agreement consent to the continuing jurisdiction for the purposes of enforcing this Protective Oder and remedying any violations thereof.

24. **Limitation on Use of Confidentiality Designations**. This Confidentiality Agreement has been agreed to by the Parties to facilitate discovery and the production of relevant information in these actions. Neither the entry of this Order, nor the designation of any information, document or the like as Confidential or Highly Confidential Discovery Material, nor the failure to make such designation, shall constitute evidence with respect to any issue in these actions.

25. **Execution**. This stipulation may be signed by the parties in counterpart.

26. **Adoption by the Court**. The Court adopts the foregoing agreement of the parties as a Protective Order in this Action.

Respectfully Submitted,

/s/ *Don M. Downing*
Don M. Downing, Esq., #41786
Gray, Ritter & Graham, P.C.
701 Market Street, Suite 800
St. Louis, Missouri 63101

/s/ Adam J. Levitt
Adam J. Levitt, Esq.

Wolf Haldenstein Adler Freeman & Herz LLC
55 W. Monroe Street, Suite 1111
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Liaison Counsel For Plaintiffs

/s/ *Terry Lueckenhoff*
Terry Lueckenhoff, #43843
Blackwell Sanders Peper Martin LLP
720 Olive Street, Suite 2400
Saint Louis, Missouri 63101

Liaison Counsel For Defendants

SO ORDERED, ADJUDGED, AND DECREED
this ___ day of May, 2007

_____
THE HONORABLE CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE LLRICE 601 CONTAMINATION LITIGATION	)	**Master Docket No. 4:06MD1811**
	)	**MDL Docket No. 1811**
	)	**Judge Catherine D. Perry**

UNDERTAKING

I, _____, declare under penalty of perjury that:

My present address is _____. I have received a copy of the Confidentiality Agreement and Protective Order (the "Confidentiality Agreement") in the above-captioned case.

I have read the Confidentiality Agreement, and will hold in confidence, will not disclose to anyone not qualified under the Confidentiality Agreement, and will use only for purposes of this Action any Confidential or Highly Confidential Discovery Material that is disclosed to me.

I agree to be bound by the Confidentiality Agreement. I also agree to submit to the jurisdiction of the United States District Court for the Eastern District of Missouri for the enforcement of the Confidentiality Agreement.

Date: _____ Signature: _____

EXHIBIT E

Defendants in Master Consolidated Amended Class Action Complaint

Bayer AG

Bayer CropScience AG

Bayer CropScience GmbH

Bayer CropScience, Inc.

Bayer BioScience NV

Bayer CropScience LP

Bayer CropScience Holding, Inc.

Bayer CropScience, LLC

Bayer Corporation

StarLink Logistics, Inc.